

Exhibit E

**WEILAND, GOLDEN
SMILEY, WANG EKVALL & STROK, LLP**
Evan D. Smiley, State Bar No. 161812
Lei Lei Wang Ekvall, State Bar No. 163047
Autumn D. Spaeth, State Bar No. 208707
Hutchison B. Meltzer, State Bar No. 217166
Robert S. Marticello, State Bar No. 244256
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Telephone: 714-966-1000
Facsimile: 714-966-1002

Proposed General Bankruptcy for
Alfred H. Siegel, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re
LBREP/L-LEHMAN SUNCAL MASTER I,
LLC, et al.
Debtor

Case No. 8:08-bk-15588-ES

Chapter 11 Case

(Jointly Administered with Case Nos.
8:08-bk-15637-ES; 8:08-bk-15639-ES;
and 8:08-bk-15640-ES)

____ Affects LBREP/L-SunCal Master I, LLC
Only

**DECLARATION OF ALFRED H.
SIEGEL IN SUPPORT OF OMNIBUS
OPPOSITION TO MOTIONS FOR
RELIEF FROM THE AUTOMATIC STAY
FILED BY LEHMAN COMMERCIAL
PAPER INC.**

____ Affects LBREP/L-SunCal McAllister
Ranch, LLC Only

____ Affects LBREP/L-SunCal McSweeny
Farms, LLC Only

____ Affects LBREP/L-SunCal Summerwind
Ranch, LLC Only

X Affects All Debtors.

DATE: November 20, 2008

TIME: 2:00 p.m.

**PLACE: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92107**

1 I, Alfred H. Siegel, declare:

2 1. I am the chapter 11 trustee of the administratively consolidated estates of
3 LBREP/L-Lehman SunCal Master I, LLC ("Lehman/Lehman SunCal Master"), LBREP/L-
4 SunCal McAllister Ranch, LLC ("McAllister Ranch"), LBREP/L-SunCal McSweeney Farms
5 ("McSweeney Farms"), and LBREP/L-SunCal Summerwind Ranch ("Summerwind
6 Ranch"; collectively, the "Debtors"). I know each of the following facts to be true of my
7 own personal knowledge, except as otherwise stated, and, if called as a witness, I could
8 and would competently testify with respect thereto. I make this declaration in support of
9 the Omnibus Opposition to Motions for Relief from the Automatic Stay Filed by Lehman
10 Commercial Paper, Inc. (the "Motion"). All terms as defined in the Motion are incorporated
11 herein by this reference.
12

13 1. Attached as Exhibit "A" is a true and correct copy of the complaint that I
14 intend to file if relief from stay is granted in the Lehman Bankruptcy Cases.
15

16 2. In the short time since my appointment, my professionals and I have spent
17 considerable time investigating pre-petition financial affairs, assets, and liabilities of the
18 Debtors and, more specifically, the Debtors' pre-petition transactions with Lehman
19 Commercial. While I am still conducting my investigation, my professionals and I, have
20 uncovered numerous issues with respect to the loans by Lehman Commercial to
21 Lehman/SunCal Master and the guarantees of the Lehman Subsidiary Debtors, which
22 form the basis for the Lehman Relief Motions.

23 3. I am still investigating other issues related to the pre-petition transactions
24 with Lehman Commercial:

25 a) Why Lehman Commercial funded only \$50 million of the \$75 million
26 revolving lien of credit provided for under the First Credit Agreement, which
27 effectively deprived the Lehman/SunCal Master of the additional liquidity to needed
28 meet its obligations;

b) If Lehman Commercial required Lehman/SunCal Master to maintain \$25 million in the Development Account/Debt Service Reserve and restricted the Debtors' access to the account, effectively freezing these funds and further diminishing the Debtors' available capital, despite the fact that the Debtors were required to pay interest on those funds;

c) Whether the approximately \$10.6 million in transactional fees and costs generated by Lehman Brothers and its affiliates was reasonable; and

d) Whether the payment of approximately \$5.7 million in loan proceeds from the Lien Credit Agreements to Patterson Ranch benefited the Lehman SunCal Subsidiaries.

4. My professionals and I have spent a considerable amount of time investigating the facts and circumstances of these cases and, especially, the Debtors' transactions with Lehman Commercial, and much investigation still needs to be done. However, in consultation with my professionals, I have concluded that the Lehman Relief Motions should be denied in their entirety. Moreover, based upon discussions with counsel, I am advised that the estates have viable claims for equitable subordination, fraudulent transfer, and breach of fiduciary duty against Lehman Commercial, Lehman Lakeside and potentially other Lehman-related entities, which claims potentially far exceed the value of the collateral at issue in these cases.

5. The real estate projects and the \$18 million development account at First Bank are unquestionably necessary for an effective reorganization beginning with the commencement of suit against Lehman Commercial. Based upon the advice of my counsel, I believe the estates have claims against Lehman Commercial and other secured creditors which will probably result in the elimination of the liens against the real estate projects and other collateral and preserve these liens for the benefit of the estates. My professionals are in discussions with third parties to use the estate properties through plan of reorganization with new funding to provide a meaningful distribution to creditors. I am also concurrently examining and evaluating the sale of the real estate projects through

1 a plan, and using the resulting proceeds for a distribution to creditors. While I pursue my
2 plan options and litigation, the value of the real estate projects will be maintained through
3 the use of cash collateral or, potentially, debtor in possession financing.

4 6. I believe I can file a plan relatively soon that will maximize the value of the
5 estates.

6 7. As of the date the Lehman Relief Motions were filed, the bankruptcy
7 schedules had not been filed by the Debtors. Lehman Commercial could not serve notice
8 of the Lehman Relief Motions on the 20 largest general unsecured creditors for each
9 Debtor as required by the applicable bankruptcy rules. Moreover, many of these creditors
10 may not have received notice of the chapter 11 bankruptcy cases due the fact that the
11 master mailing matrix of creditors in the Debtors' cases was not recently. The 20 largest
12 unsecured creditors have significant claims against these estates, and are entitled to
13 notice of the Lehman Relief Motions to protect their interests. On this basis alone, the
14 Court should deny the Lehman Relief Motions, or at minimum continue the hearings on
15 thereon to provide for proper notice.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 13th day of November 2008, at Thermal Oaks, California.

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ALFRED H. SIEGEL

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 650 Town Center Drive, Suite 950, Costa Mesa, CA 92626.

On November 13, 2008, I served the within document(s) described as:
**DECLARATION OF ALFRED H. SIEGEL IN SUPPORT OF OMNIBUS OPPOSITION TO
MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY FILED BY LEHMAN
COMMERCIAL PAPER INC**

on the interested parties in this action as stated on the attached mailing list.

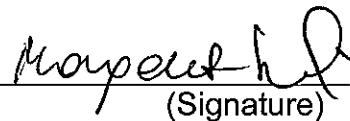
☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 13, 2008, at Costa Mesa, California.

I declare under penalty of perjury that the foregoing is true and correct.

Margaret Sciesinski
(Type or print name)


(Signature)

Welland, Golden,
Smiley, Wang Ekvall & Strook, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
TELEPHONE 714-966-1000

Smiley, Wang Ekvall & Strook, LLP

In re **LBREP/L—SunCal Master I LLC**
Case No.: 8:08-bk-15588-ES
Revised: November 11, 2008 (MS)

SERVICE LIST—SHORT LIST

LBREP/L-SunCal Master I LLC
3500 West Olive Ave., Suite 650
Burbank, CA 91505-5501
DEBTOR

LBREP/L-SunCal Master I LLC
2392 Morse Avenue
Irvine, CA 92614-6234
Facsimile: (949) 777-4050
DEBTOR

Scott C. Clarkson, Esq.
Clarkson Gore & Marsella
3424 Carson Street, Suite 350
Torrance, CA 90503-5716
Telephone: (310) 542-0111
Facsimile: (310) 214-7254
Email: sclarkson@lawcgm.com
DEBTOR'S COUNSEL

Eve A. Marsella, Esq.
Clarkson Gore & Marsella
3424 Carson Street, Suite 350
Torrance, CA 90503-5716
Telephone: (310) 542-0111
Facsimile: (310) 214-7254
Email: emarsella@lawcgm.com
DEBTOR'S COUNSEL

Craig R. Rankin, Esq.
Levene Neale & Bender LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: cmr@lnbrb.com
DEBTOR'S COUNSEL

United States Trustee
Attn: Michael J. Hauser, Esq.
411 W. Fourth Street, Suite 9041
Santa Ana, CA 92701-8000
Telephone: (714) 338-3417
Facsimile: (714) 338-3421
Email: michael.hauser@usdoj.gov
U.S. TRUSTEE

PROOF OF SERVICE

Smiley, Weiland, Golden,
Wang Ekvall & Strok, LLP
630 Town Center Drive, Suite 950
Los Angeles, CA 90045
TELEPHONE 714-986-1000

- 1 Alfred H. Siegel
Siegel Gottlieb Mangel & Levine
- 2 15233 Ventura Boulevard, 9th Floor
Sherman Oaks, CA 91403-2201
- 3 Telephone: (818) 325-8441
Facsimile: (818) 325-8545
- 4 **CHAPTER 11 TRUSTEE**
- 5 Gramercy Warehouse Funding I LLC
420 Lexington Avenue
6 New York, NY 10170-0002
PETITIONING CREDITOR
- 7 Daniel H. Reiss, Esq.
8 Levene Neale Bender Rankin & Brill LLP
10250 Constellation Blvd., Suite 1700
9 Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
10 Facsimile: (310) 229-1244
Email: dmr@lnbrb.com
11 **COUNSEL FOR PETITIONING CREDITOR**
- 12 David R. Zaro, Esq.
Yale K. Kim, Esq.
13 Allen Matkins Leck Gamble
Mallory & Natsis LLP
14 515 S. Figueroa Street, 9th Floor
Los Angeles, CA 90071-3398
15 Telephone: (213) 622-5555
Facsimile: (213) 620-8816
16 Email: dzaro@allenmatkins.com
COUNSEL FOR LEHMAN COMMERCIAL PAPER, INC.
- 17 George A. Davis, Esq.
18 Cadwalader Wickersham & Taft LLP
One World Financial Center
19 New York, NY 10281-1003
Telephone: (212) 504-6000
20 Facsimile: (212) 504-6666
Email: george.davis@cwt.com
21 **COUNSEL FOR LEHMAN COMMERCIAL PAPER, INC.**
- 22 Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
23 300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137
24 Telephone: (213) 687-5000
Facsimile: (213) 687-5600
25 Email: van.durrer@skadden.com
COUNSEL FOR SQUARE MILE

26
27
28

PROOF OF SERVICE

In re **LBREP/L—SunCal Master I LLC**

Case No.: 8:08-bk-15588-ES

Revised: November 11, 2008 (MS)

SERVICE LIST—JOINT COMMITTEE OF CREDITORS

- 1 Hemet Manufacturing Co., Inc.
2 dba Genesis Construction
3 Attn: Bruce Perry
4 170 E Oakland Avenue
5 Hemet, CA 92543
6 Telephone: (951) 652-6977
7 Facsimile: (951) 925-6585
- 8 John D. Scriptor
9 dba Masonry Plus
10 Attn: Steven G. Gibbs, Esq.
11 Law Offices of Steven G. Gibbs
12 4540 California Avenue, Suite 330
13 Bakersfield, CA 93309
14 Telephone: (661) 633-1144
15 Facsimile: (661) 864-1938
- 16 Lennar Homes of California, Inc.
17 Attn: Graham Jones
18 25 Enterprise
19 Aliso Viejo, CA 92656
20 Telephone: (949) 349-8096
21 Facsimile: (949) 448-0523
- 22 Nissho of California, Inc.
23 Attn: Christopher R. Mordy
24 Peterson & Price, APC
25 655 W. Broadway, Suite 1600
26 San Diego, CA 92101
27 Telephone: (619) 234-0361
28 Facsimile: (619) 234-4786
- 29 Stantec Consulting, Inc.
30 Attn: William Roberts
31 19 Technology Drive
32 Irvine, CA 92618
33 Telephone: (949) 923-6966
34 Facsimile: (949) 923-6121

PROOF OF SERVICE

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
TELEPHONE 714-968-1000

1 Superior Pipelines, Inc.
Attn: T. Scott Belden, Esq.
2 Klein DeNatale Goldner
Cooper Rosenlieb & Kimball, LLP.
3 4550 California Avenue, 2nd Floor
Bakersfield, CA 93309
4 Telephone: (661) 395-1000
Facsimile: (661) 326-0418

5
6 TC Construction Co., Inc.
Attn: Jack Gieffels
10540 Prospect Avenue
7 Santee, CA 92701
Telephone: (619) 820-3927
8 Facsimile: (619) 819-9938

9 West Coast Structures, Inc.
dba Western Structures
10 Attn: Brian M. Skajem
6005 Tyler Street
11 Riverside, CA 92503
Telephone: (951) 352-4300
12 Facsimile: (951) 352-4301

13 Weston Mason Marketing
Attn: Toni Weston
14 3130 Wilshire Boulevard, 4th Floor
Santa Monica, CA 90403
15 Telephone: (310) 571-1425
Facsimile: (310) 826-8098

16

17

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PROOF OF SERVICE

In re **LBREP/L—SunCal Master I LLC**
Case No.: 8:08-bk-15588-ES
Revised: November 11, 2008 (MS)

SERVICE LIST—20 LARGEST

Corporation for Interest Rate
175 N. Franklin Street, Suite 2
Chicago, IL 60606
Telephone: (312) 332-2362

Heller Ehrman White & McAulif
File No. 73536
P.O. Box 6000
San Francisco, CA 94160-3536
Telephone: (415) 772-6000

O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071
Telephone: (949) 760-9600
Facsimile: (213) 430-6407

Standard & Poor's
2542 Collection Center Drive
Chicago, IL 60693
Telephone: (800) 767-1896
Facsimile: (312) 233-7051

Lehman Commercial Paper, Inc.
745 Seventh Street
New York, NY 10019
FIRST LIEN LENDER

George A. Davis, Esq.
Andrew Troop, Esq.
Calwalader Wickersham & Taft
One World Trade Center
New York, NY 10281-1003
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: george.davis@cwt.com
**COUNSEL FOR LEHMAN
COMMERCIAL PAPER, INC.**

Grammercy Warehouse Funding I
420 Lexington Avenue
New York, NY 10170-0002
SECOND LIEN LENDER

Daniel H. Reiss, Esq.
Levene Neale Bender Rankin & Brill LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: dnr@lnbrb.com
**COUNSEL FOR GRAMMERCY
WAREHOUSE FUNDING I**

Square Mile Structure Debt
Corporation Trust Center 1209
Wilmington, DE 19801

Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137
Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: van.durrer@skadden.com
COUNSEL FOR SQUARE MILE

PROOF OF SERVICE

In re **LBREP/L—SunCal McAllister Ranch LLC**
Case No.: 8:08-bk-15637-ES
Revised: November 11, 2008 (MS)

SERVICE LIST—20 LARGEST

5	Aleco Corporation P.O. Box 81136 Bakersfield, CA 93380	Fenceworks, Inc. 870 N. Main Street Riverside, CA 92501 Facsimile: 951-788-5649
8	General Electric Capital Corporation 3135 Easton Turnpike Fairfield, CT 06828	Genesis Golf Builders, Inc. 11032 N. 52nd Street Scottsdale, AZ 85254 Facsimile: 602-595-5345
10	Golden State Fence Company 870 N. Main Street Riverside, CA 92501 Facsimile: 951-788-5649	Granite Construction Company 38000 Monroe Street Indio, CA 92203 Facsimile: 760-775-8228
12	IRV Guinn Construction 6533 Rosedale Highway Bakersfield, CA 93308 Facsimile: 661-325-5173	Jaqua & Sons 1050 West Avenue M Lancaster, CA 93534 Facsimile: 661-723-3358
15	Klassen Corporation 2021 Westwind Drive Bakersfield, CA 93301 Facsimile: 661-324-3900	Landscape Development, Inc. 28447 Witherspoon Parkway Valencia, CA 91355 Facsimile: 661-295-1969
17	Lennar Homes of California 5251 Office Park Drive Bakersfield, CA 93309	Masonry Plus 5116 W. Aven K-8 Lancaster, CA 93536 Facsimile: 661-943-1874
20	McKenna's Curb & Gutter Co. P.O. Box 42335 Bakersfield, CA 93384 Facsimile: 661-588-1878	Park West Landscape, Inc. 13581 Desmond Street Pacoima, CA 91351 Facsimile: 818-485-0991
22	Petrotech Resources Company 5400 Rosedale Hwy Bakersfield, CA 93308 Facsimile: 661-635-0468	Sierra Cascade Construction 1043 West Avenue M-4, Ste E Palmdale, CA 93551 Facsimile: 661-942-1754
25	Stantec Consulting - Chicago 13980 Collections Center Drive Chicago, IL 60693	SunCal Management, Inc. 2392 Morse Avenue Irvine, CA 92614 Facsimile: 949-777-4050

PROOF OF SERVICE

Welland, Golden,
Smiley, Wang Ekvall & Strok, LLP
850 Town Center Drive, Suite 950
Costa Mesa, CA 92626
TELEPHONE 714-966-1000

1 Superior Pipeline, Inc.
P.O. Box 81387
2 Bakersfield, CA 93380

3
4 Lehman Commercial Paper, Inc.
745 Seventh Street
New York, NY 10019
5 **FIRST LIEN LENDER**

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Grammercy Warehouse Funding I
420 Lexington Avenue
New York, NY 10170-0002
SECOND LIEN LENDER

Square Mile Structure Debt
Corporation Trust Center 1209
Wilmington, DE 19801

Troon Golf, LLC
15044 N. Scottsdale Road, Suite 300
Scottsdale, AZ 85254
Facsimile: 480-477-0573

George A. Davis, Esq.
Andrew Troop, Esq.
Calwalader Wickersham & Taft
One World Trade Center
New York, NY 10281-1003
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: george.davis@cwt.com
**COUNSEL FOR LEHMAN
COMMERCIAL PAPER, INC.**

Daniel H. Reiss, Esq.
Levene Neale Bender Rankin & Brill LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: dmr@lnbrb.com
**COUNSEL FOR GRAMMERCY
WAREHOUSE FUNDING I**

Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137
Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: van.durrer@skadden.com
COUNSEL FOR SQUARE MILE

PROOF OF SERVICE

In re **LBREP/L—SunCal Summerwind Ranch LLC**
Case No.: 8:08-bk-15640-ES
Revised: November 11, 2008 (MS)

SERVICE LIST—20 LARGEST

5	All American Asphalt P.O. Box 2229 Corona, CA 91718 Facsimile: 951-739-4671	City of Calimesa 908 Park Avenue Calimesa, CA 92320 Facsimile: 909-795-4399
8	Dust Control, Inc. 452 Viele Avenue Beaumont, CA 92223 Facsimile: 951-922-6167	Goe & Forsythe, LLP 660 Newport Center Drive, Suite 320 Newport Beach, CA 92660 Facsimile: 949-721-0409
10	Innovative Inclosures 301 Industrial Way, Suite 5 Fallbrook, CA 92028 Facsimile: 951-696-2552	Jackson, DeMarco, Tidus 2030 Main Street, Suite 1200 Irvine, CA 92614 Facsimile: 949-752-0597
13	Keith Companies, The-Inlan 13980 Collections Center Drive Chicago, IL 60693	Miller Barondess, LLP 1999 Avenue of the Stars Los Angeles, CA 90067 Facsimile: 310-552-8400
15	OCB Reprographics, Inc. 17721 Mitchell North Irvine, CA 92614 Facsimile: 949-975-1482	Pacific Advanced Civil Engineering 17520 Newhope Street, Suite 200 Fountain Valley, CA 92708 Facsimile: 714-481-7299
18	Pacific Solis Engineering Inc. 10653 Progress Way Cypress, CA 90630 Facsimile: 714-220-9589	RBF Consulting 14725 Alton Parkway Irvine, CA 92618 Facsimile: 949-472-8373
20	Schilling Corporation 695 Greenfield Drive El Cajon, CA 92021 Facsimile: 619-579-3733	Signs & Pinnick, Inc. P.O. Box 945 El Cajon, CA 92022-0945 Facsimile: 619-579-0719
23	Southern California Pipeline 1100 Irvine Blvd., Suite 37 Tustin, CA 92780 Facsimile: 714-838-0222	Stantec 22690 Cactus Avenue, Suite 300 Moreno Valley, CA 92553 Facsimile: 951-653-5308
25	SunCal Management, LLC 2392 Morse Avenue Irvine, CA 92614 Facsimile: 949-777-4050	Superior Masonry, Inc. 300 W. Olive Street, Suite A Colton, CA 92324 Facsimile: 909-370-2992

PROOF OF SERVICE

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
660 TOWN SQUARE DRIVE, SUITE 950
COVINGTON, MASSACHUSETTS 01909
TELEPHONE 714-966-1000

1 TC Construction Company
10540 Prospect Avenue
2 Santee, CA 92071
Facsimile: 619-258-9751
3
4 Lehman Commercial Paper, Inc.
745 Seventh Street
New York, NY 10019
5 **FIRST LIEN LENDER**
6
7
8
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420 Lexington Avenue
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Corporation Trust Center 1209
15 Wilmington, DE 19801
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21
22
23
24
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26
27
28

West Coast Structures
6005 Tyler Street
Riverside, CA 92503
Facsimile: 951-352-4301

George A. Davis, Esq.
Andrew Troop, Esq.
Calwalader Wickersham & Taft
One World Trade Center
New York, NY 10281-1003
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: george.davis@cwt.com
**COUNSEL FOR LEHMAN
COMMERCIAL PAPER, INC.**

Daniel H. Reiss, Esq.
Levene Neale Bender Rankin & Brill LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: dhrr@lnbrb.com
**COUNSEL FOR GRAMMERCY
WAREHOUSE FUNDING I**

Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137
Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: van.durrer@skadden.com
COUNSEL FOR SQUARE MILE

PROOF OF SERVICE

In re **LBREP/L—SunCal McSweeney Farms LLC**
Case No.: 8:08-bk-15639-ES
Revised: November 11, 2008 (MS)

SERVICE LIST—20 LARGEST

5	AEI-CASC Engineering, Inc. 937 S. Via Lata, Suite 500 Colton, CA 92324 Facsimile: 909-783-0108	All American Asphalt P.O. Box 2229 Corona, CA 91718 Facsimile: 951-736-4671
8	Genesis Construction P.O. Box 7067 Hemet, CA 92545 Facsimile: 951-925-6585	Group Seven Landscape Dev. I 45655 Reagan Way, Suite J Murrieta, CA 92563
10	Homebuyers Guide Real Estate 17780 Fitch, Suite 195 Irvine, CA 92614 Facsimile: 949-476-3071	KIP Incorporated 25740 Washington Avenue Murrieta, CA 92562 Facsimile: 951-698-7898
12	Nissho of California 1902 South Santa Fe Avenue Vista, CA 92083 Facsimile: 760-727-8706	Outdoor Dimensions 5325 E. Hunter Avenue Anaheim, CA 92807 Facsimile: 714-693-9578
15	Pacific Soils Engineering, I P.O. Box 2249 Cypress, CA 92630 Facsimile: 714-220-9589	Pacific States Engineering 29992 Hunter Rd., Suite 105-102 Murrieta, CA 92563
17	Palm Canyon Contractors, Inc. P.O. Box 656 Yucaipa, CA 92399	Rohm Insurance Agency 26 Plaza Square, Suite 200 Orange, CA 92866 Facsimile: 714-516-2965
20	Sierra Pacific Electrical Co. 2542 Avalon Street Riverside, CA 92509 Facsimile: 951-784-4489	So. Cal Sandbags, Inc. 12620 Bosley Lane Corona, CA 92883-6358 Facsimile: 951-277-2303
22	Southwestern Equipment LLC 5520 Walesley Street, #100 La Mesa, CA 91942 Facsimile: 619-469-1707	SunCal Management, LLC 2392 Morse Avenue Irvine, CA 92614 Facsimile: 949-777-4050
25	Superior Masonry, Inc. 300 W. Olive Street, Suite A Colton, CA 92324 Facsimile: 909-370-2992	TNT Grading, Inc. 268 Redel Road. San Marcos, CA 92078 Facsimile: 760-736-4057

PROOF OF SERVICE

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 250
Costa Mesa, CA 92626
TELEPHONE 714-966-1000

1 Weston/ Mason Marketing
3130 Wilshire Blvd., 4th Floor
2 Santa Monica, CA 90403
Facsimile: 310-826-8098
3
4 Lehman Commercial Paper, Inc.
745 Seventh Street
New York, NY 10019
5 FIRST LIEN LENDER
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7
8
9 Grammercy Warehouse Funding I
420 Lexington Avenue
10 New York, NY 10170-0002
SECOND LIEN LENDER
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14 Square Mile Structure Debt
Corporation Trust Center 1209
15 Wilmington, DE 19801
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Woodside Hemet 148, Inc.
23121 Antonio Parkway, Suite 1
Rancho Santa Margarita, CA 92688

George A. Davis, Esq.,
Andrew Troop, Esq.
Calwalader Wickersham & Taft
One World Trade Center
New York, NY 10281-1003
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: george.davis@cwt.com
COUNSEL FOR LEHMAN
COMMERCIAL PAPER, INC.

Daniel H. Reiss, Esq.
Levene Neale Bender Rankin & Brill LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: dhrr@lnbrb.com
COUNSEL FOR GRAMMERCY
WAREHOUSE FUNDING I

Van C. Durrer, II, Esq.
Skadden Arps Slate Meagher & Flom LLP
300 S. Grand Avenue, Suite 3400
Los Angeles, CA 90071-3137
Telephone: (213) 687-5000
Facsimile: (213) 687-5600
Email: van.durrer@skadden.com
COUNSEL FOR SQUARE MILE

PROOF OF SERVICE

EXHIBIT A

Attorneys for Alfred H. Siegel,
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re
LBREP/L-Sun Cal Master I, LLC, et al.,
Debtor.

Case No. 8:08-BK-15588-ES
Chapter 11 Case
(Jointly Administered with Case Nos.
8:08-bk-15637-ES; 8:08-bk-15639-ES;
and 8:08-bk-15640-ES)

Adversary Case No. _____

____ Affects LBREP/L-SunCal Master I,
LLC Only
____ Affects LBREP/L-SunCal McAllister
Ranch, LLC Only
____ Affects LBREP/L-SunCal McSweeney
Farms Only
____ Affects LBREP/L-SunCal Summerwind
Ranch Only
____ Affects All Debtors,

COMPLAINT:

- (1) TO AVOID AND RECOVER
FRAUDULENT CONVEYANCE
PURSUANT TO 11 U.S.C. SECTIONS
544(b) AND 550 AND CALIFORNIA
CIVIL CODE SECTIONS 3439.04(a)(1);
- (2) TO AVOID AND RECOVER
FRAUDULENT CONVEYANCE
PURSUANT TO 11 U.S.C. SECTIONS
544(b) AND 550 AND CALIFORNIA
CIVIL CODE SECTIONS 3439.04(a)(2);
- (3) TO AVOID AND RECOVER
FRAUDULENT CONVEYANCE
PURSUANT TO 11 U.S.C. SECTIONS
544(b) AND 550 AND CALIFORNIA
CIVIL CODE SECTIONS 3439.05;
- (4) TO PRESERVE THE TRANSFERS
FOR THE BENEFIT OF THE ESTATES
PURSUANT TO 11 U.S.C SECTION
551;
- (5) FOR IMPOSITION OF
CONSTRUCTIVE TRUST;
- (6) FOR BREACH OF FIDUCIARY DUTY;
- (7) FOR BREACH OF DUTY OF GOOD
FAITH AND FAIR DEALING;
- (8) FOR EQUITABLE SUBORDINATION;
AND

ALFRED H. SIEGEL, Chapter 11 Trustee,
Plaintiff,

v.

LEHMAN COMMERCIAL PAPER, INC.,
a New York corporation; LBREP LAKESIDE
SC MASTER I, LLC, a Delaware limited
liability company; GRAMERCY
WAREHOUSE FUNDING I, LLC, a Delaware
limited liability company; and SQUARE
MILE, an entity of unknown origin,

274057.1

COMPLAINT

Defendants. } (9) FOR AWARD OF ATTORNEYS' FEES
AND COSTS

Alfred H. Siegel, the duly appointed, qualified and acting chapter 11 trustee (the "Trustee" or "Plaintiff") of the administratively consolidated estates of LBREP/L-SunCal Masters I, LLC, LBREP/L-SunCal McAllister Ranch, LLC, LBREP/L-SunCal McSweeney Farms, and LBREP/L-SunCal Summerwind Ranch (collectively, the "Estates") hereby files this Complaint: (1) To Avoid and Recover Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil Code § 3439.04(a)(1); (2) To Avoid and Recover Fraudulent Transfer Pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil Code § 3439.04(a)(2); (3) To Avoid and Recover Fraudulent Transfer Pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil Code § 3439.05; (4) To Preserve Avoidable Transfer for the Benefit of the Estates Pursuant to 11 U.S.C. § 551; (5) For Imposition of Constructive Trust; (6) For Breach of Fiduciary Duty; (7) For Equitable Subordination; (8) For Declaratory Relief; and (9) For Award of Attorneys' Fees and Costs (the "Complaint") against Lehman Commercial Paper, Inc. ("Lehman Commercial"), LBREP Lakeside SC Master I LLC ("Lehman Lakeside"), Gramercy Warehouse Funding I, LLC ("Gramercy"), and Square Mile ("Square Mile") (collectively, the "Defendants"), and alleges that:

STATEMENT OF JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (C), (E), (H), (K), and (O), and 1334.

2. Venue properly lies in this judicial district in that this civil proceeding arises under title 11 of the United States Code as provided for in 28 U.S.C. § 1409(a).

3. This adversary proceeding arises out of and is related to the involuntary bankruptcy cases of the administratively consolidated estates of LBREP/L-SunCal Masters I, LLC ("Lehman/SunCal Master"), LBREP/L-SunCal McAllister Ranch, LLC ("McAllister Ranch LLC"), LBREP/L-SunCal McSweeney Farms ("McSweeney Farms

1 LLC"), and LBREP/L-SunCal Summerwind Ranch ("Summerwind Ranch LLC"), filed on
2 September 10 and 11, 2008 (the "Petition Dates") and currently pending in the United
3 States Bankruptcy Court for the Central District of California, Santa Ana Division.
4 McAllister Ranch LLC, McSweeney Farms LLC, and Summerwind Ranch LLC collectively
5 referred to as "Lehman/SunCal Subsidiaries." "Lehman/SunCal Master and the
6 Lehman/SunCal Subsidiaries are collectively referred to as the "Debtors."

7
8 **STATEMENT OF STANDING**

9 4. The Plaintiff, as the Trustee, has standing to bring this action pursuant to 11
10 U.S.C. §§ 323, 544, 550, and 551.

11
12 **PARTIES TO THE ACTION**

13 5. Plaintiff, Alfred H. Siegel, is the duly appointed, qualified and acting chapter
14 11 trustee for the Estates. This action is brought by the Trustee in his representative
15 capacity only.

16 6. The Trustee is informed and believes, and on that basis alleges, that
17 defendant Lehman Commercial is a New York corporation with its principal place of
18 business at 745 Seventh Avenue, New York, New York 10019.

19 7. The Trustee is informed and believes, and on that basis alleges, that
20 Lehman Lakeside is a Delaware limited liability company with its principal place of
21 business at is an individual residing at 3500 West Olive Avenue Suite 650, Burbank,
22 California 915053.

23 8. The Trustee is informed and believes, and on that basis alleges, that
24 defendant Gramercy is the administrative agent for the Second Lien creditors and is sued
25 in this representative capacity.

26 9. The Trustee is informed and believes, and on that basis alleges, that
27 defendant Square Mile is the administrative agent for the Third Lien creditors and is sued
28 in this representative capacity.

GENERAL ALLEGATIONS

10. The Trustee is informed and believes, and on that basis alleges, debtor Lehman/SunCal Master is a holding company, established to fund the real estate development projects owned by each of its four operating subsidiaries, *i.e.*, the debtor Lehman/SunCal Subsidiaries and a non-debtor LBREP/L-SunCal Patterson Ranch, LLC. Debtor Lehman/SunCal Master is controlled by defendant Lehman Lakeside. Defendant Lehman Lakeside is a subsidiary of Lehman Bros. Real Estate Partners, LP ("LBREP") and an affiliate of defendant Lehman Commercial. More specifically, defendant Lehman Lakeside is the managing member and 90% equity owner of debtor Lehman/SunCal Master. The remaining 10% equity interest in debtor Lehman/SunCal Master is owned by SCC Ranch Venture, LLC, which is an affiliate of SCC Acquisitions, Inc. d/b/a SunCal Companies.

11. The Trustee is informed and believes, and on that basis alleges, debtor Lehman/SunCal Master's primary asset is its interest in its operating subsidiaries. Debtor Lehman/SunCal Master is the sole equity member of the debtors McAllister Ranch LLC, McSweeney Farms LLC, and Summerwind Ranch LLC, each of which, in turn, own real estate developments bearing the same name (collectively, the "Real Properties"). Each Lehman/SunCal Subsidiary has its own set of creditors and assets. The following is a more detailed discussion of the Real Properties:

MCALLISTER RANCH

12. The Trustee is informed and believes, and on that basis alleges, debtor McAllister Ranch LLC owns the real estate development commonly known as "McAllister Ranch," which is located near Bakersfield in Kern County, California. The Trustee understands that McAllister Ranch is designed to be a 2070 acre master-planned community featuring a golf course, lake, and approximately 6,087 homes. All of the lots have been graded, and the first of five planned subdivisions is nearly complete. In addition, the golf course is completed and the clubhouse is framed and roofed. Defendant

1 Lehman Commercial asserts that McAllister Ranch was worth \$123 million on an "as is"
2 basis as of March 31, 2008 (approximately seven months prior to the Petition Dates).

3 **MCSWEENEY FARMS**

4 13. The Trustee is informed and believes, and on that basis alleges, debtor
5 McSweeney Farms LLC owns the real estate development commonly known as
6 "McSweeney Farms," which located near Hemet in Riverside County, California.
7 McSweeney Farms is comprised of 673 acres, and a total of 1,640 lots are planned to be
8 included thereon. Phase 1 of the project has been completed and sold out. The Trustee
9 is informed and believes that hundreds of homes have been completed, and there are
10 residents living in a substantial portion of these homes. Defendant Lehman Commercial
11 asserts that McSweeney Farms was worth \$13,300,000 on an "as is" basis as of
12 March 31, 2008.

13 **SUMMERWIND RANCH**

14 14. The Trustee is informed and believes, and on that basis alleges, debtor
15 Summerwind Ranch LLC owns the real estate development commonly known as
16 "Summerwind Ranch," which is located near Calimesa in Riverside County, California.
17 Summerwind Ranch is comprised of 2,591 acres with 3,683 lots planned thereon.

18 15. The Trustee is informed and believes, and on that basis alleges, debtor
19 Lehman/SunCal Master, as borrower, entered into three Lien Credit Agreements with
20 defendant Lehman Commercial as an administrative agent and participant (collectively,
21 the "Lien Credit Agreements"). Pursuant to the First and Second Lien Credit Agreements
22 (collectively, the "January 2006 Loan"), which were entered into on or around January 19,
23 2006, debtor Lehman/SunCal Master borrowed a total of \$320 million as follows: (1) a
24 revolving credit facility of \$75 million and term loan facility of \$160 million under the First
25 Lien Credit Agreement; and (2) a \$85 million term loan facility under the Second Lien
26 Credit Agreement. Defendant Lehman Commercial participated in the January 2006
27 Loans, and acted as the sole administrative agent, and Lehman Brothers, Inc. ("Lehman
28 Brothers"), served as the sole lead arranger and syndicator. Defendant Lehman

1 Lakeside, Debtor's Lehman/SunCal Master's managing member, caused Lehman/SunCal
2 Master's obligations under these agreements to be guaranteed by the Lehman/SunCal
3 Subsidiaries, and secured by first and second liens cross-collateralized against the Real
4 Properties and other assets. More specifically, defendant Lehman Commercial obtained a
5 lien from its affiliate defendant Lehman Lakeside against debtor Lehman/SunCal Master
6 for the full amount of the January 2006 Loan (the "Lehman/SunCal Master Lien"), as well
7 as liens against each of the Lehman/SunCal Subsidiaries also in the full amount of the
8 January 2006 Loan ("Lehman/SunCal Subsidiary Liens"). Therefore, a Lehman affiliated
9 entity was the lender, administrative agent, arranger, syndicator, borrower, managing
10 member of the borrower, and guarantor on the January 2006 Loans.

11 16. The Trustee is informed and believes, and on that basis alleges, as a result
12 of the January 2006 Loan, the Debtors' were collectively saddled with \$320 million in
13 secured debt and the significant interest thereon. However, Debtors did not receive the
14 benefit of all the January 2006 Loan proceeds. Of the \$235 million allegedly loaned to
15 Lehman/SunCal Master under the First Lien Credit Agreement, a \$144 million equity
16 distribution (the "Dividend") was immediately paid from escrow to Debtor Lehman/SunCal
17 Master's equity owners, of which 90%, \$117 million, was paid to Lehman Lakeside.
18 Debtors appear to never have received the \$144 million, nor any value for the transfer of
19 the Dividend.

20 17. The Trustee is informed and believes, and on that basis alleges, most of the
21 \$320 million January 2006 Loan proceeds went to one Lehman entity or another. Besides
22 the \$144 million Dividend, \$10.6 million was paid to Lehman Commercial for its
23 arrangement and administrative fee. Approximately \$62 million went to repay another
24 Lehman entity's, "Lehman, Ali," loans to the Lehman/SunCal Subsidiaries. This value
25 received by the Debtors is offset by the fact that debtor McSweeney Farms LLC paid
26 approximately \$21 million into escrow prior to closing.

27 18. The Trustee is informed and believes, and on that basis alleges, from
28 escrow \$25 million was automatically set aside by escrow to fund a "Debt Service

1 Reserve" which the Debtors could not use, but served as defendant Lehman
2 Commercial's collateral. Although this Debt Service Reserve which has also been
3 characterized as the Development Account was allegedly intended to be used by the
4 Debtors for various development and maintenance expenses, it appears that Lehman
5 Commercial's unfair exercise of control agreements and its lack of consent effectively
6 prohibited the use of these funds during the a substantial portion of the loan term.
7 Moreover, it appears that Lehman Commercial unnecessarily caused the funds in the
8 Development Account to be borrowed in order to increase its yield on its investment.
9 Similarly, there was another \$25 million on the revolving credit line that was never made
10 available to the Debtors between the January 19, 2006 funding date and March, 2007
11 resulting in a combined \$50 million of lost liquidity of which Debtors did not receive the
12 benefit.

13 19. Moreover, while the Lehman/SunCal Subsidiaries were forced to grant
14 security interests in the Real Properties to secure the entire \$320 million in loans to
15 Lehman/SunCal Master, each entity received very little of the loan proceeds. The
16 following is a brief summary of the Trustee's findings regarding each Lehman/SunCal
17 Subsidiary:

18 A. McAllister Ranch LLC: The Trustee is informed and believes, and on
19 that basis alleges, in exchange for securing the entire \$320 million in loans to
20 Lehman/SunCal Master, McAllister Ranch received only loan proceeds sufficient to
21 replace the existing \$20 million first position lien, which was held by another
22 Lehman-related entity and allegedly created on November 5, 2004.. Moreover, Lehman
23 SunCal Master upstreamed approximately \$22.8 million of McAllister Ranch sale deposits
24 in March, 2006 which were effectively used in the operating account to disburse to
25 Lehman Commercial as part of the \$40 million in interest and principal it received as part
26 of the \$235 million loan (\$144 million of which was disbursed as an allegedly as a
27 dividend).

1 B. McSweeney Farms LLC: The Trustee is informed and believes, and
2 on that basis alleges, in exchange for securing the entire \$320 million in loans to
3 Lehman/SunCal Master, McSweeney Farms LLC received only loan proceeds sufficient to
4 replace the existing \$17.7 million first position lien, which was held by another
5 Lehman-related entity and allegedly created on May 18, 2005. Moreover, on January 19,
6 2006, through the escrow related to the funding of the loans, SunCal Master upstreamed
7 approximately \$21.5 million of McSweeney Farms sale proceeds which were also
8 effectively used to as part of the \$40 million in interest and principal Lehman Commercial
9 received as part of the \$235 million loan (\$144 million of which was disbursed allegedly as
10 a dividend).

11 C. Summerwind Ranch LLC: The Trustee is informed and believes, and
12 on that basis alleges, in exchange for securing the entire \$320 million in loans to
13 Lehman/SunCal Master, Summerwind Ranch LLC received only loan proceeds sufficient
14 to replace the existing \$24 million first position lien, which was held by another
15 Lehman-related entity and allegedly created on May 3, 2005. It is unclear what other
16 benefit Summerwind Ranch LLC received at this point.

17 20. The Trustee is informed and believes, and on that basis alleges, In sum, the
18 only concrete economic benefit received by the Lehman/SunCal Subsidiaries in exchange
19 for securing Lehman/SunCal Master's obligations under First and Second Lien Credit
20 Agreements (*i.e.*, the repayment of the \$320 million in loans) was funds sufficient to relay
21 existing obligations to another Lehman-related entity, in amounts far less than that
22 secured by the Real Properties. Clearly, the Lehman/SunCal Subsidiaries did not receive
23 reasonably equivalent value.

24 21. The Trustee is informed and believes, and on that basis alleges, on
25 February 6, 2007, a Third Lien Credit Agreement was entered into by Lehman/SunCal
26 Master, which allegedly provided for an additional \$75 million term loan, guaranteed again
27 by the Lehman/SunCal Subsidiaries and secured by third priority liens ("Third
28

1 Lien") against the Real Properties. Lehman/SunCal Master Lien, the Lehman/SunCal
2 Subsidiary Liens and the Third Lien are collectively referred to as the "Transfers."

3 22. The Trustee is informed and believes, and on that basis alleges, just as with
4 the January 2006 Loans, Lehman Commercial participated and served as the
5 administrative agent, and Lehman Brothers served as sole arranger and syndicator with
6 Lehman Lakeside as the managing member of the Debtors. It appears that the need for
7 the Third Lien Credit Agreement was not contemplated when the First and Second Lien
8 Credit Agreements were originated but needed because of cash flow shortages within the
9 Debtors, and simultaneous pressure by Lehman Commercial for the Debtors to timely pay
10 their obligations under the First Lien Credit Agreement. One year later, on February 14,
11 2008, defendant Lehman Commercial resigned as administrative agent under the Second
12 and Third Lien Credit Agreements and defendants Gramercy and Square Mile,
13 respectively, became the administrative agents. From the \$75 million loaned to
14 Lehman/SunCal Master under the Third Lien Credit Agreement, \$50 million was paid out
15 of escrow directly to Lehman Commercial to pay down obligations on the First Lien Credit
16 Agreement.

17 23. The Trustee is informed and believes, and on that basis alleges, the
18 negotiations between Lehman Commercial and Lehman Lakeside essentially set the
19 Debtors' up for default. For example, on January 31, 2008, Lehman Commercial, as the
20 lien agent for all three Lien Credit Agreements, negotiated the Fourth Amendment and
21 Waiver to the First Lien Credit Agreement (the "Amendment"), which required that the
22 cash in the Development Account be *increased* from \$25 million to \$50 million by
23 March 31, 2008. Then, 60 days later on March 31, 2008, Lehman Commercial declared a
24 default due to the Debtors failure to increase the Development Account. Lehman
25 Commercial knew or reasonably should have known that the Debtors would be unable to
26 comply with the Amendment and come up with an additional \$25 million in cash 60 days.

27 24. The Trustee is informed and believes, and on that basis alleges, the other
28 defaults declared by Lehman Commercial are equally suspect. Lehman Commercial

1 argues that the Debtors missed an interest payment, even though there was
2 approximately \$25 million of cash in the Development Account, which was admittedly
3 available to repay and prepay loans. Lehman Commercial argues that the Debtors failed
4 to timely deliver financial statements, but the Debtors were under the control of Lehman
5 Commercial's affiliate, Lehman Lakeside. Lehman Commercial further asserts that the
6 Debtors failed to pay a \$100,000 administrative fee and maintain the necessary liquidity
7 requirements, which was presumably caused by that fact that \$144 million of the
8 January 2006 Loan proceeds were paid directly from escrow to Lehman/SunCal Master's
9 owners and, primarily, Lehman Lakeside.

10 **SIGNIFICANT POST-PETITION EVENTS**

11 25. The Trustee is informed and believes, and on that basis alleges, on
12 October 2, 2008, Lehman Commercial filed four motions for relief from the automatic stay
13 (the "Lehman Relief Motions") in each individual case, which were originally scheduled for
14 hearings on October 28, 2008. On October 14, 2008, a group of petitioning creditors filed
15 an opposition to the Lehman Relief Motions. The Debtors, controlled by Lehman
16 Lakeside, did not oppose the Lehman Relief Motions, arguing that the Debtors have no
17 viable defenses to thereto.

18 26. The Trustee is informed and believes, and on that basis alleges, following
19 the Debtors' refusal to oppose the Lehman Relief Motions, on or about October 15, 2008,
20 a group of petitioning creditors filed a motion for order authorizing the appointment of a
21 chapter 11 trustee (the "Trustee Appointment Motion"). The petitioning creditors argued
22 that an independent trustee should be appointed to represent the interests of the Debtors'
23 estates, especially in light of the affiliate relationship between Lehman Commercial, the
24 lender and movant, and Lehman Lakeside, the managing member and majority owner of
25 the Lehman/SunCal Master.

26 27. The Trustee is informed and believes, and on that basis alleges, on
27 October 22, 2008, the Debtors answered the involuntary petitions, consented to the entry
28 of the orders for relief, and then filed motions to convert the cases from chapter 11 to

chapter 7 (collectively, the "Motions to Convert"). The Debtors, controlled by Lehman Lakeside, argued that conversion was proper because there was no possibility to reorganize. Both Lehman Commercial and the Lehman-controlled Debtors opposed the Trustee Appointment Motion.

28. The Trustee is informed and believes, and on that basis alleges, following his appointment, the Trustee immediately moved the Court for authority to use cash collateral on an emergency basis (the "Cash Collateral Motion"). Lehman Commercial opposed the Cash Collateral Motion, despite the fact that the Trustee sought Court authority to use the cash in the Development Account for the sole purpose of preventing the neglect complained of in the Lehman Relief Motions, and which was originally caused by Lehman Commercial's own conduct. On November 6, 2008, the Court heard and approved the Cash Collateral Motion over Lehman Commercial's objection. Pursuant to the Court's order, the Trustee has authority to use the funds in the Development Account pursuant to the Court-approved budget to bring the deferred maintenance up to date (which maintenance Lehman Commercial refused to fund) and to preserve the value of the Real Properties.

FIRST CLAIM FOR RELIEF
(To Avoid Transfer and Recover Intentionally Fraudulently Conveyance
under 11 U.S.C. §§ 544(b), 550, and Cal. Civ. Code § 3439.04(a)(1))
(against Lehman Commercial, Gramercy and Square Mile)

29. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 28, inclusive, as though fully set forth herein.

30. The Trustee is informed and believes, and on that basis alleges, the Transfers occurred during the four-year period immediately preceding the Petition Dates.

31. The Trustee is informed and believes, and on that basis alleges, the Transfers were made with the actual intent to hinder, delay or defraud the Estates' creditors.

1 32. Trustee is informed and believes, and on that basis alleges, that the
2 Lehman/SunCal Master Lien is in the amount of \$320 million. The Lehman/SunCal
3 Subsidiaries Liens are cross collateralized in the amount of \$320 million. The Third Lien
4 is in the amount of \$75 million.

5 33. The Trustee is informed and believes, and on that basis alleges, creditors
6 existed at the time of the Transfers that remained unpaid as of the Petition Dates.

7 34. The Trustee is informed and believes, and on that basis alleges, the
8 Transfers were made to or for the benefit of Lehman Commercial, Gramercy and Square
9 Mile.

10 35. The Trustee is informed and believes, and on that basis alleges, the Debtors
11 received no or inadequate consideration from Lehman Commercial, Gramercy and
12 Square Mile in exchange for the Transfers.

13 36. Trustee is informed and believes, and on that basis alleges, that Lehman
14 Commercial is an insider of the Debtors.

15 37. The Trustee is informed and believes, and on that basis alleges, that
16 Debtors became insolvent as a result of the Transfers.

17 38. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled
18 to set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil
19 Code §§ 3439.04(a)(1) and 3439.07, and 11 U.S.C. § 550.

20
21 **SECOND CLAIM FOR RELIEF**
22 **(To Avoid Transfer and Recover Constructively Fraudulently Conveyance**
23 **under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.04(a)(2))**
24 **(against Lehman Commercial, Gramercy and Square Mile)**

25 39. Plaintiff incorporates each and every allegation contained in paragraphs 1
26 through 38, inclusive, as though fully set forth herein.

27 40. The Trustee is informed and believes, and on that basis alleges, the
28 Transfers occurred during the four-year period immediately preceding the Petition Dates.

41. Trustee is informed and believes, and on that basis alleges, that the
Lehman/SunCal Master Lien is in the amount of \$320 million. The Lehman/SunCal

1 Subsidiaries Liens are cross collateralized in the amount of \$320 million. The Third Lien
2 is in the amount of \$75 million.

3 42. The Trustee is informed and believes, and on that basis alleges, creditors
4 existed at the time of the Transfers that remained unpaid as of the Petition Dates.

5 43. The Trustee is informed and believes, and on that basis alleges, the
6 Transfers were made to or for the benefit of Lehman Commercial, Gramercy and Square
7 Mile.

8 44. The Trustee is informed and believes, and on that basis alleges, the Debtors
9 received no or inadequate consideration from Lehman Commercial, Gramercy and
10 Square Mile in exchange for the Transfers.

11 45. The Trustee is informed and believes, and on that basis alleges, at the time
12 of the Transfers, the Debtors were engaged or were about to engage in a business or a
13 transaction for which the remaining assets of the Debtors were unreasonably small in
14 relation to the business or transaction.

15 46. The Trustee is informed and believes, and on that basis alleges, at the time
16 of the Transfers, the Debtors intended to incur, or believed or reasonably should have
17 believed that they would incur, debts beyond their ability to pay as they became due.

18 47. The Trustee is informed and believes, and on that basis alleges, Lehman
19 Commercial, Gramercy and Square Mile did not take the Transfers for a reasonably
20 equivalent value or in good faith.

21 48. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled to
22 set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil Code
23 §§ 3439.04(a)(2) and 3439.07, and 11 U.S.C. § 550.

24
25 **THIRD CLAIM FOR RELIEF**
26 **(To Avoid Transfer and Recover Constructively Fraudulently Transferred**
27 **Property under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.05)**
28 **(against Lehman Commercial, Gramercy and Square Mile)**

29 49. Plaintiff incorporates each and every allegation contained in paragraphs 1
30 through 48, inclusive, as though fully set forth herein.

1 50. The Trustee is informed and believes, and on that basis alleges, the Debtors
2 made the Transfers to and for the benefit of Lehman Commercial, its affiliates, Gramercy
3 and Square Mile.

4 51. The Trustee is informed and believes, and on that basis alleges, the Debtors
5 did not receive reasonably equivalent value for making the Transfers.

6 52. The Trustee is informed and believes, and on that basis alleges, at the time
7 of the Transfers, the Debtors were either insolvent and/or were rendered insolvent as a
8 result of the Transfers.

9 53. The Trustee is informed and believes, and on that basis alleges, creditors
10 existed at the time of or prior to the Transfers that remained unpaid as of the Petition
11 Dates.

12 54. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled to
13 set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil Code
14 §§ 3439.05 and 3439.07, and 11 U.S.C. § 550.

15
16 **FOURTH CLAIM FOR RELIEF**
17 **(To Preserve Transfer for the Benefit of the Estates**
18 **Pursuant to 11 U.S.C. § 551)**
19 **(against Lehman Commercial, Gramercy and Square Mile)**

20 55. Plaintiff incorporates each and every allegation contained in paragraphs 1
21 through 54, inclusive, as though fully set forth herein.

22 56. Pursuant to 11 U.S.C. § 551, the Transfers are preserved for the benefit of
23 the Estates as the Transfers are avoidable under 11 U.S.C. §§ 544 and 550 as set forth
24 above.

25 **FIFTH CLAIM FOR RELIEF**
26 **(For Imposition of Constructive Trust)**
27 **(against Lehman Commercial, Gramercy and Square Mile)**

28 57. Plaintiff incorporates each and every allegation contained in paragraphs 1
through 56, inclusive, as though fully set forth herein.

1 58. The Trustee is informed and believes, and on that basis alleges, the
2 Transfers are fraudulent transfers for less than reasonably equivalent value.

3 59. The Trustee is informed and believes, and on that basis alleges, Lehman
4 Commercial, Gramercy and Square Mile were unjustly enriched as a result of the
5 Transfers.

6 60. By reason of the foregoing, Plaintiff is entitled to the imposition of a
7 constructive trust as of the date of the Transfers for the benefit of the Estates as of the
8 Petition Date.

9
10 **SIXTH CLAIM FOR RELIEF**
11 **(For Breach of Fiduciary Duty)**
12 **(against Lehman Commercial and Lehman Lakeside)**

13 61. Plaintiff incorporates each and every allegation contained in paragraphs 1
14 through 60, inclusive, as though fully set forth herein.

15 62. The Trustee is informed and believes, and on that basis alleges, Lehman
16 Lakeside, as the managing member of debtor Lehman SunCal Master, which is the 100%
17 member of the remaining debtors, has fiduciary duties to the Debtors and their creditors.
18 Lehman Commercial, Lehman Lakeside's affiliate and recipient of, among other things,
19 the Transfers, exercised sufficient control over the Debtors through, at a minimum, the
20 affiliate relationship with Lehman Lakeside, to be considered an insider with fiduciary
21 duties to the Debtors and their creditors.

22 63. The Trustee is informed and believes, and on that basis alleges, Lehman
23 Lakeside and Lehman Commercial breached their fiduciary duties to Debtors and their
24 creditors, by, among other things set out in more detail above, causing the Debtors to
25 agree to the Transfers when they did not receive reasonably equivalent value for these
26 liens, and agreeing to loan terms which left insufficient funds for the development of the
27 Real Properties, and causing the Debtors to agree to an increased reserved account
28 which was unsustainable. Moreover, by permitting a \$144 million distribution of equity
through the proceeds of development loans with no benefit to the Debtors, it caused

1 interest and principal obligations which burdened the Debtors to such an extent that it
2 resulted in inadequate liquidity to sustain the operations.

3 64. The Trustee is informed and believes, and on that basis alleges, these
4 breaches caused the Debtors' insolvency and inability to pay their debts as they came
5 due.

6 65. The Trustee is informed and believes, and on that basis alleges, Debtors
7 and their other creditors who did not know or have reason to know about the Transfers
8 have been injured in an amount to be proven at trial.

9 66. By reason of the foregoing, Plaintiff is entitled to damages in an amount to
10 be proven at trial. Because Lehman Commercial and Lehman Lakeside's conduct was
11 malicious, oppressive and in open disregard for the rights of others, the Plaintiff is entitled
12 to exemplary damages in an amount to be proven at trial.

13
14 **SEVENTH CLAIM FOR RELIEF**
15 **(For Breach of Implied Covenant of Good Faith and Fair Dealing)**
16 **(against Lehman Commercial)**

17 67. Plaintiff incorporates each and every allegation contained in paragraphs 1
18 through 66, inclusive, as though fully set forth herein.

19 68. The Trustee is informed and believes, and on that basis alleges, defendant
20 Lehman Commercial owed Debtors the implied covenant of good faith and fair dealing
21 pursuant to the First, Second and Third Lien Credit Agreements in which Lehman
22 Commercial impliedly covenanted that it would, in good faith and in the exercise of fair
23 dealing, deal with debtor Lehman/SunCal Master fairly and honestly and do nothing to
24 impair, interfere with, hinder or potentially injure its rights.

25 69. The Trustee is informed and believes, and on that basis alleges, defendant
26 Lehman Commercial breached the implied covenant of good faith and fair dealing, by,
27 among other things, the acts detailed above, which may not constitute breach of contract,
28 but which are contrary to the First, Second and Third Lien Credit Agreements purpose of
loans, i.e. real estate development. These acts include, at a minimum, structuring the

1 First, Second and Third Lien Credit Agreements, and related terms, so that sufficient
2 funds for the real estate development projects did not exist upon funding, refusing to allow
3 Debtors to use the funds in the Debt Servicing Account/Development Account to service
4 the January 2006 Loan, and requiring terms which Lehman Commercial knew or should
5 have known Debtors could not comply with such as the increased Debt Servicing
6 Account/Development Account withholding and using these terms to call a default on the
7 January 2006 Loan.

8 70. The Trustee is informed and believes, and based thereon alleges, Debtors
9 performed all acts, duties and responsibilities required of it under the First, Second and
10 Third Lien Credit Agreements except that which was prevented or caused by Lehman
11 Commercial's improper conduct.

12 71. By reason of the foregoing, Plaintiff is entitled to damages in an amount to
13 be proven at trial.

14
15 **EIGHTH CLAIM FOR RELIEF**
(For Equitable Subordination)
16 **(against Lehman Commercial, Gramercy and SquareMile)**

17 72. Plaintiff incorporates each and every allegation contained in paragraphs 1
18 through 71, inclusive, as though fully set forth herein.

19 73. The Trustee is informed and believes, and on that basis alleges, Lehman
20 Commercial, Gramercy and SquareMile are the recipients of the Lehman/SunCal Master
21 Lien, the Lehman/SunCal Subsidiary Liens, and the Third Lien, respectively. Collectively
22 these liens are in the amount of no less than \$395 million and Lehman Commercial,
23 Gramercy and SquareMile have asserted or will assert first, second and third priority
24 secured claims against the Estates for this amount.

25 74. The Trustee is informed and believes, and on that basis alleges, Lehman
26 Commercial has engaged in inequitable conduct described in more detail above including
27 causing the Debtors, through its affiliate Lehman Lakeside, to agree to the
28 Lehman/SunCal Master Lien, the Lehman/SunCal Subsidiary Liens and the Third Lien

1 when they did not receive reasonably equivalent value for these liens, causing the
2 Dividend to its affiliate Lehman Lakeside which left insufficient funds for the development
3 of the Real Properties, and causing the Debtors to agree to an increased reserved
4 account which was unsustainable.

5 75. The Trustee is informed and believes, and on that basis alleges, Lehman
6 Commercial's misconduct resulted in injury to the Debtors and their creditors by putting
7 the Debtors in insolvency, unable to pay their debts as they came due in an amount to be
8 proven at trial but, at a minimum, in an amount equivalent to the Dividend plus interest.

9 76. By reason of the foregoing, Plaintiff is entitled to equitably subordinate
10 Lehman Commercial's, Gramercy's and SquareMile's claims in an amount to be proven at
11 trial but, at a minimum, in the amount of the Dividend, plus interest, which result is not
12 inconsistent with the purposes of the Bankruptcy Code.

13
14 **NINTH CLAIM FOR RELIEF**
15 **(For Award of Attorneys' Fees and Costs Pursuant to Rule 7008(b)**
16 **of the Federal Bankruptcy Rules)**
17 **(against all Defendants)**

18 77. Plaintiff incorporates each and every allegation contained in paragraphs 1
19 through 76, inclusive, as though fully set forth herein.

20 78. Based on the foregoing allegations, Plaintiff is entitled to reasonable
21 attorneys' fees and costs resulting from bringing the instant action.

22 **WHEREFORE**, Plaintiff prays that this Court enter a judgment against Defendants
23 as follows:

24 1. Avoiding the Transfers and declaring that the Transfers be annulled and
25 rendered void as fraudulent transfers and for recovery of the Transfers for the benefit of
26 the Estates against Lehman Commercial, Gramercy and Square Mile.

27 2. For preservation of the Transfers for the benefit of the Estates.

28 3. For imposition of a constructive trust as of the date of the Transfers for the
benefit of the Estates.

1 4. For a money judgment against Lehman Commercial and Lehman Lakeside
2 for breach of their fiduciary duties.

3 5. For the equitable subordination to general unsecured creditors of all liens
4 created under the First, Second and Third Credit Agreements and for the preservation of
5 such liens for the benefit of the Estates;

6 6. Plaintiff be awarded the Estates' costs and attorneys' fees incurred in this
7 action.

8 7. For award of exemplary damages.

9 8. For pre-judgment and post-judgment interest at the maximum legal rate.

10 9. For such other and further relief as this Court may, in its discretion, deem
11 just and proper.

12
13 Dated: November _____, 2008

14
15 By: _____

16 Attorneys for Alfred H. Siegel,
17 Chapter 11 Trustee
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